

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA
PLAINTIFF,
VS.
DAVID KLUCKA
DEFENDANT,

2:09-CR-523-KJD-LRL

MINUTES OF THE COURT

DATED: August 30, 2010

PRESENT:
THE HONORABLE **KENT J. DAWSON**, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PEGGIE VANNOZZI COURT REPORTER: FELICIA ZABIN

PRESENT FOR PLAINTIFF: LUCAS FOLETTA, AUSA

PRESENT FOR DEFENDANT: DAVID KLUCKA, PRO SE WITH JAMES ORONoz,
STANDBY COUNSEL. MICHAEL PANDULLO ALSO
PRESENT

Proceedings begin at 9:15 A.M. Defendant is present, in custody. Deputy U.S. Marshal Alfredo Despy is present as case agent. The prospective jurors are not present.

The Court makes findings for the record and DENIES the following motions: Defendant's Motion to Dismiss for Lack of Prosecutable Case (#50), Defendant's Motion to Dismiss for Lack of Evidence (#51), and Defendant's Motion to Dismiss Due to the Government's Late Filing (#61). Defendant's Motion for a Speedy Trial (#68), Defendant's Motion for Status Hearing (#70) and Defendant's Motion Requesting Items for Trial (#71) are denied as moot. Defendant's Addenda (#75 and #77) are denied as moot. Government's Motion to Limit the Scope of Defendant's Right to Self-Representation (#80) is denied.

Mr. Klucka and Mr. Oronoz ask that the leg irons be removed from Mr. Klucka's ankles. The Court denies the request, based upon Defendant's prior behavior in this courtroom and based upon security concerns. The Court notes that all the tables in the courtroom have table skirts that will disguise the Defendant's leg irons. Additionally, the Court asks counsel and Mr. Klucka to remain seated at all times when the jury is in the courtroom.

55 prospective jurors enter at 9:40 AM and are sworn. The Court conducts voir dire. Counsel and Mr. Klucka pass the jurors for cause. The Court thanks and excuses the prospective jurors who were not questioned at 10:35 AM. The prospective jurors exit at 10:37 AM, during which time counsel and Defendant exercise peremptory challenges off the record.

Proceedings reconvene at 11:05 AM. 14 jurors are seated and sworn to try this case. The Court admonishes the jury.

Mr. Foletta makes the Government's opening statement. Mr. Klucka reserves his right to make an opening statement.

USA VS. DAVID KLUCKA

2:09-CR-523-KJD-LRL

August 30, 2010

page two

Sheri Ann Shipp is sworn to testify as a witness for the Government. Mr. Foletta examines the witness. Government's exhibit 1 is marked, admitted and published to the jury. Mr. Klucka examines the witness. The Court warns the Defendant that he may be held in contempt of court and that this would be the only warning. Mr. Foletta and Mr. Klucka examine the witness. The witness is excused.

Proceedings recess from 12:30 PM to 1:40 PM. The jury is not present. Mr. Foletta and Mr. Klucka indicate that they do not have any objections to the Court's proposed jury instructions.

The jury enters at 1:42 PM.

Felix Serrano is sworn to testify as a witness for the Government. Mr. Foletta and Mr. Klucka examine the witness. The witness is excused.

Alfredo Despy is sworn to testify as a witness for the Government. Mr. Foletta and Mr. Klucka examine the witness. The witness is excused.

The Government rests.

Mr. Klucka advises the Court that he will not give an opening statement nor will he testify. Defendant rests.

In response to a juror question, Government's exhibit 1 is replayed.

The Court reads the jury instructions.

Proceedings recess from 3:12 PM to 3:30 PM. The jury is present.

Mr. Foletta presents the Government's closing statement. Mr. Klucka presents his closing argument. Mr. Foletta presents Government's rebuttal statement.

The bailiff is sworn. The jury retires to deliberate at 4:10 PM.

Proceedings reconvene at 5:06 PM. Counsel and Defendant are present. The jury is not present. The Court discusses a note from the jury and proposes an answer to the question.

Proceedings recess at 5:07 PM and reconvene at 7:32 PM. Counsel and Defendant are present. The jury is not present. The Court reads the jury note that indicates that the jury feel that they are "hung." The Court discusses the response to this note.

The jury enters at 7:40 PM. The Court canvasses the jury foreperson and the jurors as to whether additional deliberation would be successful. All respond that further deliberation would not result in a verdict. The Court thanks the jurors and excuses them. The jury exits at 7:45 PM.

USA VS. DAVID KLUCKA

2:09-CR-523-KJD-LRL

August 30, 2010

Page 3

The Court, Counsel and Mr. Klucka discuss further proceedings and the rescheduling of the jury trial. Mr. Foletta asks the Court to set the retrial for the earliest possible date. Mr. Oronoz advises the Court of his trial schedule for the months of September and October. He will check with State Court judges to see if he can move any of the trials so that this matter can be retried at the earliest possible time. The matter will be reset by minute order by the clerk.

Mr. Klucka makes an oral motion for OR release. The Court denies the request for the reasons given in open court. The defendant is remanded to custody.

Proceedings adjourn at 7:50 PM.

LANCE S. WILSON, CLERK
U.S. DISTRICT COURT

/s/ _____
DEPUTY CLERK